

# EXHIBIT C-2

1           THE COURT: Now, let me ask you. This is a form  
2 so this may not be very illuminating for other more  
3 narrative documents. But certainly this form, to the extent  
4 it has a date of birth line, and a nationality line, and a  
5 column for signatures, you can tell from the context what  
6 these are. So, and that's why I ask the question. I think  
7 I'd be fine and I suspect the other side would be fine when  
8 in that context it's very clear, so you don't need to  
9 specify that it's somebody's date of birth because, in fact,  
10 you can tell that from the context. It's very clear.

11           I guess the harder thing is when you have a memo.  
12 And so you have a memo and it has sort of an ongoing  
13 narrative discussion, perhaps lengthy and it has various  
14 things redacted and you can't tell what a various thing is  
15 from the context.

16           MR. HYMAN: In our proposal, in the joint  
17 administrator's proposal of the redactions this would still  
18 be accompanied by a log and the log would identify the  
19 different types of categories -- of --

20           THE COURT: Would it identify it by page so you  
21 can actually tell what's what? I mean, I think that that's  
22 right.

23           MR. HYMAN: It does not because that is another  
24 level of expense to go through. The way --

25           THE COURT: But if you can't tell from the context

1     what it is that's redacted, then I think -- isn't that  
2     relevant information for purposes of the privileged log when  
3     you have an invocation of privilege? And we're not even  
4     talking about Chapter 15, we're just talking about standard  
5     -- standard privileged stuff and the local rules on that.  
6     That you'd be able to identify and say, well, this is what's  
7     redacted because we're telling you what it is because you  
8     wouldn't know from the context and you can't...

9             So, for example, if somebody's reading a paragraph  
10     in a memo and that paragraph turns out to either, on the one  
11     hand, be incredibly relevant to various things that the  
12     other side is interested in or not at all relevant, they  
13     might say, I'm curious what it was that was redacted from  
14     the paragraph. Or given that it's not very exciting and the  
15     redaction is this kind of redaction, I could care less.

16            MR. HYMAN: For these types of documents and these  
17     types of redactions, which are -- they're set forth in the  
18     proposal for the protocol, right? They're very limited  
19     types of information. It doesn't recall -- it doesn't  
20     require blocks of redaction that would not otherwise be  
21     relatively obvious from the context.

22            THE COURT: My hypothetical assumes that you can't  
23     figure out from the context what it is. So, if a memo said,  
24     we met with an individual, comma, redacted two words and an  
25     initial, comma, at so-and-so place and whatever to



1 discuss... Well, you could tell from the context what that  
2 is. But if you had, say, two lines redacted and the lines  
3 are completely redacted and you couldn't tell what they are,  
4 do they contain information that's names? Is it privileged  
5 legal information? What is it? And you don't tie what the  
6 justification is to the area of the document, then people  
7 completely see as to what it is.

8 MR. HYMAN: To the extent that it was privileged  
9 information, that is absolutely included in the log and  
10 identified specifically, is that correct?

11 MR. HITCHING: Your Honor, Jarret Hitching. To  
12 the extent something's being redacted for privilege, that is  
13 receiving a separate designation that says Redacted For  
14 Privilege versus Redacted for GDPR.

15 THE COURT: Right, but what I'm saying is if you  
16 can't tell -- so privilege is fine, but if you can't tell  
17 what the GDPR redaction is from the context, I would think  
18 that it makes sense to identify that. Again, this sample is  
19 sort of the -- kind of the layup, right? Because you can  
20 tell date of birth, nationality, signature, so you know.

21 So, you had me at hello on this. I'm fine with  
22 this kind of form of redaction, your proposal with this kind  
23 of document. But I am thinking about ones that are not  
24 essentially forms where the box you're filling in tells you  
25 the answer of what's redacted. And I don't know -- do you



1 have any other samples of things that are redacted that  
2 might be harder calls?

3 MR. HYMAN: I don't have any samples with me, Your  
4 Honor, though. But what would accompany our version of the  
5 protocol would be a schedule, a log at the end that  
6 identifies the types of personal information. We think it's  
7 unlike --

8 THE COURT: I understand that. But that isn't...  
9 Again, what the whole point of a log is, which is often  
10 overlooked, is that it gives enough information so people  
11 can decide what they want to go to war over, right? And so  
12 some things they may say, well, I really don't care about  
13 this. That's what discovery is always about. Which is  
14 saying you can either write about things theoretically, in  
15 which case we'd all have to quit our day jobs and just do  
16 that, or you can say what is a practical matter do I really  
17 care about? And so that's why producing documents is  
18 usually helpful when fighting about what's in the documents.

19 And that's why when talking about privilege, the  
20 additional -- the only real point for those logs is that  
21 somebody can say, well, I can gauge what that is and whether  
22 I care enough to fight about it. Or if I'm going to fight  
23 about it, whether I can lump in it with other things or  
24 whether it's a one-off, it informs the rest of the process.

25 So, for this stuff I'm fine. When you can look at

1 it and say I know what's been redacted, I have no problem  
2 with it. But if -- and, again, see, the problem is without  
3 some example I don't really know how this would play out.  
4 But so my concern is instances where the other side can't  
5 figure out what was redacted and, therefore, isn't in a  
6 position to make an informed decision. And so that'll lead  
7 to further discovery in litigation. And so that's what I'm  
8 worried about.

9 Again, this doesn't bother me. If there are forms  
10 that are like this, again, I don't think -- she'll correct  
11 me if I'm wrong, but I don't think that's what they're  
12 worried about that.

13 MR. HYMAN: No, I appreciate that, Your Honor. We  
14 don't think that's what they're worried about either. I  
15 think that we would argue, though, for virtually all  
16 instances you should -- in matching it up with the log that  
17 attends it, you should very easily be able to determine what  
18 information was redacted.

19 We do include a proposal or procedure in the  
20 protocol to the extent there are any disputes as to whether  
21 information should have been excluded or not excluded to  
22 designated certain individuals, and somebody has a direct  
23 phone line to somebody and can answer a question. I guess  
24 the concern that I have is, in an effort to try to save some  
25 costs and "expediate" the production --



1           THE COURT: I understand that, I understand that.  
2     But it's hard for me to evaluate what you're saying without  
3     seeing the documents. Again, if the context is clear, then  
4     the context is clear. Then nobody needs to waste the time.  
5     But if the context is not clear, then the question is well,  
6     would it be helpful? And, frankly, to comply with a -- what  
7     a privileged log is supposed to do, which gives you -- i.e.,  
8     gives me enough information so I can assess the basis of the  
9     privilege. If you have a context that doesn't inform the  
10    redaction and you might challenge it if it's certain kinds  
11    of information but you might not challenge it if it's  
12    others, I don't know how you'd make that decision without  
13    it.

14           So, my thought is to say that where context is  
15    clear, I'm fine with the way you're doing it. But where  
16    context is not clear and nobody will be able to figure out  
17    what's redacted, that the log -- you can do it any way you  
18    want but I would imagine it's least expensive to just have  
19    the log say Page 28, personal information, you know, and  
20    just identify what the personal information is just so we  
21    don't have to spend -- so this isn't the opening salvo of  
22    another extensive fight on discovery, which is also  
23    expensive. So, that's what...

24           Now, if you want to prepare a couple of samples  
25    where you think there's some specific guidance you want from

1 the Court and say, hey, look, in this sample we can tell you  
2 this is the kind of thing we don't want to do and we think  
3 we can demonstrate that to you, I'm happy to look at the  
4 samples. But if it can't -- again, my hypothetical assumes  
5 that you can't tell by the context.

6 MR. HYMAN: Yeah, I think that what we're  
7 concerned about is that we will have a dispute as to  
8 judgment calls, and there will be just a continuing effort  
9 to require us to go through and identify information. But I  
10 take your point, Your Honor. Unfortunately, the way the  
11 system works today is it would be very easy if when the log  
12 was produced, the log identified the types of personal  
13 information in the order in which they were redacted from  
14 the document. That would eliminate all issues.  
15 Unfortunately --

16 THE COURT: Listen, there's lots of ways to do  
17 this. And so, for example, you don't produce a privileged  
18 log that says Privileged and that's all it says. There are  
19 different kinds of privilege. And so you've got to give  
20 enough information to somebody to make an intelligent  
21 decision to think about the issues.

22 Now, I don't know if there's any distinction  
23 between what people have been talking about for Category 1  
24 versus Category 2 on this and whether that distinction is --  
25 let me ask Vale's counsel if that distinction is anything we



1 can use in this context to try to advance the ball.

2 MS. BALTER: Your Honor, I don't think that  
3 distinction will advance the ball here because for Category  
4 1 data there's a presumption that it's relevant to the  
5 dispute and that they can redact it. For Category 2 data,  
6 the presumption is the opposite. That it is relevant to the  
7 dispute and that it should not generally be redacted. And  
8 where they do redact that, they have to provide an  
9 explanation.

10 So, this is largely going to be about Category 1  
11 data. And in that case, it's (indiscernible) burden to  
12 raise any kind of objection. And so as the redacting party,  
13 we think that the onus should be on them to facilitate our  
14 understanding and to make sure that we can raise an  
15 objection where necessary.

16 THE COURT: Well, let me ask you. Right, there's  
17 a lot of different ways judges deal with discovery and some  
18 of it has to do with what parties are willing to live with  
19 in terms of re-review and re-redacting, which is sort of a  
20 nightmare scenario that I daily not like to be in, but  
21 sometimes people are willing to assume that risk.

22 So, if Category 1 is about things that clearly are  
23 covered by the GDPR and so there's not really a debate about  
24 that, so from their point of view it's in a stronger  
25 position, does it make sense to at least let them go ahead

1 and do some tranches that way and then we can have a further  
2 conversation? But it's caveat emptor. This is what they're  
3 suggesting. And if it turns out it doesn't work, then it  
4 doesn't work and we're going to have to go -- we're going to  
5 have to take one step forward to take, you know -- I mean,  
6 we're going to have to take a step back before we take  
7 another step forward.

8 MS. BALTER: I think the issue, Your Honor, is we  
9 just don't want to kick the can down the road any further.  
10 We've been negotiating this issue for over a month at the  
11 very least now. As you said, we're fine with this kind of  
12 document but this is for layup. We have received so few  
13 documents that it's hard for us to look at a lot of  
14 examples. But we don't want to --

15 THE COURT: Do you have anything handy that I  
16 could look at? Again, I'm putting you on the spot. Fine if  
17 you don't. But where -- again, because the devil's in the  
18 details, and I'm -- it's always -- I always talk to lawyers  
19 about how it's terrible to have to fight about theoretical  
20 rights rather than practical things because then you really  
21 have to raise issue. But it's the same for judges, right?  
22 If I can't sort of figure out what it looks like as a  
23 practicality, then I'm sort of theoretically doing  
24 something. And then my utility and my -- what I hope for is  
25 accuracy in trying to figure out a just result goes down



1 considerably. So, my batting average isn't as good. So, I  
2 don't know if you have anything that might inform this  
3 particular discussion.

4 MS. BALTER: Your Honor, we don't right now. I  
5 think that's largely a product of the fact that only 211  
6 documents have been produced to us and not many of them  
7 implicated GDPR issues to begin with. So, we just haven't  
8 had the kind of production that gives us the insight we  
9 need. But we also are concerned about a situation where  
10 we'd be asking them to reproduce things, we can imagine,  
11 like the joint administration will come back and complain  
12 about the expense there.

13 THE COURT: Yeah. Well, but --

14 MS. BALTER: So, we want to get this resolved so  
15 that we can really move forward with document production.

16 MR. HYMAN: Your Honor, the argument that they  
17 made in their letter with respect to personal email  
18 addresses and nationality was that it was so crucial to the  
19 determination of Comey. Personal information or personal  
20 email addresses and nationality could relate to numerous  
21 people, whether they're connected to this case or  
22 unconnected to this case.

23 THE COURT: We've segued off to a different topic,  
24 right?

25 MR. HYMAN: Okay. We have. So, let's go --

1 THE COURT: I mean, right? Because we're talking  
2 -- I think we were talking about redaction and now we're  
3 going to substance, which is can we redact this stuff and  
4 what's the presumption and all that sort of stuff in terms  
5 of whether it's tied to the case.

6 MR. HYMAN: Right.

7 THE COURT: So, here let me make a suggestion and  
8 you'll tell me whether you can live with it. I'm willing to  
9 go along with your proposal as an interim step but with one  
10 large caveat, which is if it becomes a problem and they say  
11 we can't -- so they can take a document and they can say I  
12 have this letter and here are some things that are redacted,  
13 and we can't figure it out, and this is exactly what we were  
14 worried about, then you may have to reprocess that document  
15 or categories of documents that are like that document.

16 MR. HYMAN: Your Honor, Jarret Hitchings is more  
17 than available to answer any phone calls as it relates in  
18 that regard.

19 THE COURT: No, no, no, but that -- you're not  
20 answering my question. You're answering a question I didn't  
21 ask that's a better question for you. So, I'm telling you  
22 if that happens and then it turns out they say this is the  
23 problem, we addressed it at the hearing, it turns out it  
24 really is a problem. This is redacted. We don't know among  
25 the laundry list of things that are identified what the



1 redaction is. We can't make an intelligent decision.  
2 Looking at this document, it implicates a lot of things we  
3 care about and we can imagine a whole bunch of scenarios,  
4 and this is not the only document. We've got a couple  
5 samples, and we need to go back -- we need them to go back  
6 and reprocess the documents.

7 MR. HYMAN: Absolutely.

8 THE COURT: All right. Because that's -- and,  
9 again, that means that sometimes you can pay upfront or you  
10 can pay later. I don't know. But that does leave you  
11 vulnerable to that problem.

12 MS. BALTER: Your Honor, just to clarify one  
13 point. That wouldn't be just for the particular documents  
14 that we use. I mean --

15 THE COURT: Well, if you come back and you say --  
16 and it's always great as a lawyer to be able to do this, by  
17 the way. So, for your own personal career moment where you  
18 can say, Judge, the thing we told you was going to happen,  
19 it has happened. And so then you can make your case. And  
20 so I'm not going to preclude you from doing that. What I'm  
21 hearing is they think it's not going to be that big an issue  
22 and that if you pick up the phone and there may be a stray  
23 thing here or there, that you can work through it.

24 And if that's the case, that's the case. But if  
25 it's not the case, then you pick up the phone and you say,

1 I've got 200 of these documents and I can't -- it's the same  
2 problem over and over again. It's exactly what we said.  
3 Then I will not hold it against you that they were already  
4 processed a particular way. Again, it's caveat emptor. You  
5 know, buyer beware. If you make this suggestion and it  
6 works out the way you want, great. If it doesn't, then you  
7 have every right to come back and say we told you this was  
8 going to -- we suspected this was going to be a problem and  
9 we're back.

10 So, it would not be necessarily limited to one  
11 document. It would be limited to whatever -- whatever the  
12 shoe fits. That well-known legal doctrine.

13 MS. BALTER: We'll make sure that if it's --  
14 whatever shoe fits doctrine goes to -- if this seems like  
15 it's going to be a problem, that we're making sure that it's  
16 applied.

17 THE COURT: Yes, and here's --

18 MS. BALTER: And not just twisting our document --  
19 if they don't come back and say, well, we can't apply this  
20 to all the rest of the documents. We have to process all  
21 the documents we processed before.

22 THE COURT: No, you reserve all your rights. And  
23 what I would suggest is that because all of you have better  
24 things to do than to sort of be mired endlessly in discovery  
25 that -- I heard a mention of tranches of documents being



1 produced. That as the documents are produced, that you all  
2 talk to one another about it. And so if this -- if you get  
3 documents and say this is a really big problem, we need to  
4 get in front of this, you talk to each other and you say,  
5 hey, what are you going to do to fix the concern we have?  
6 Maybe you fix it, maybe you don't. If you don't and it's a  
7 big problem, then you call chambers, set up a call and we'll  
8 essentially continue this same discussion.

9 So, that would -- and it sounds like they can live  
10 with that because they think as it goes forward it won't be  
11 that kind of a problem. You have your doubts and I,  
12 frankly, don't know enough to make an intelligent decision.  
13 But as long as they're willing to live with the "we need to  
14 take a step back" approach and reserve your rights on that,  
15 then I think we'll see how it goes.

16 MR. HYMAN: Thank you, Your Honor.

17 THE COURT: All right. So, I think -- let me then  
18 hear from Vale's counsel. There were three issues. That's  
19 number one.

20 MS. BALTER: Right. The second issue --

21 THE COURT: By the way, I would think we could put  
22 this all -- everything in an order. So, we could -- you  
23 know, so we've addressed the things this morning, they're  
24 going to go into an order. This would go as to the  
25 redaction of personal data on a specific rather than general

1 basis under GDPR protocols. Joint administration proposes  
2 the following. The Court will provisionally -- it will use  
3 -- will adopt the joint administrator's proposal with Vale  
4 reserving all of its rights if the lack of more specific  
5 identifying a thing for each bit of information is  
6 problematic for purposes of protecting your rights to assert  
7 the challenge to privilege or something else, then you  
8 reserve the right and the Court will make any rulings in the  
9 future on that as if the matter was raised in the first  
10 instance.

11 I'm sure you can wordsmith that better than what I  
12 just threw out there. But I think, again, just so we all  
13 have our own go-by going forward, I think the order will  
14 sort of become, hopefully, one stop shopping so that we  
15 don't end up mired endlessly in discovery, which is nobody's  
16 goal. So, all right, as to Issue Number 2?

17 MS. BALTER: Right. So, the second issue, Your  
18 Honor, is whether personal email addresses and nationality  
19 or association with country should fall under Category 1 or  
20 Category 2 of personal data. I touched on this. Category 1  
21 is data that is presumed unnecessary to resolution of the  
22 dispute. And so as a general matter that data will be  
23 redacted.

24 Category 2 of personal data is data that is  
25 presumed to be necessary to resolution of the issues in



1     dispute and so that data (indiscernible) will generally not  
2     be redacted. We're talking about one stop shopping and you  
3     had mentioned something similar to this earlier. I think  
4     this entire issue could be resolved if Your Honor has an  
5     order that says that these issues, personal email addresses  
6     and nationality or association with country are relevant to  
7     the resolution of the dispute, that would provide all the  
8     protection that they need under GDPR and we don't even have  
9     to worry about redaction in that circumstance.

10           THE COURT: All right. All right, anything else  
11     from Vale on that issue?

12           MS. BALTER: Yes, Your Honor. That said, both  
13     subjects are critical to Comey and they're also critical  
14     subjects of discovery. The joint administrators have, in  
15     fact, not even tried to argue that nationality or  
16     association with country is not relevant. They merely say  
17     that it's inconceivable that Vale wouldn't know the  
18     nationality of the directors, officers, and other employees  
19     of BSGR.

20           Now, Your Honor, even if that were true, which is  
21     impossible for us to assess because right now the joint  
22     administrators have not even provided us with documents  
23     sufficient to identify the directors and officers of BSGR.  
24     But even if that were true, it doesn't change the fact that  
25     this is directly relevant to the Comey inquiry, and that it

1 doesn't justify presumptively redacting this data for  
2 purposes of GDPR.

3 THE COURT: What about personal email? I was a  
4 little less clear what the specific email is going to tell  
5 you about Comey. It will tell you, I guess -- who's on the  
6 email is one thing, but the precise email, I'm not sure that  
7 it tells you anything about nationality or location  
8 necessarily. So, what's your thinking on that?

9 MS. BALTER: So, I think there are two issues with  
10 that. The first is that it will -- it is relevant to the  
11 scope of discovery, as we've been discussing earlier today.  
12 We do need to know the personal email addresses. Those do  
13 need to be searched for for the directors and officers, and  
14 we don't have that information.

15 The joint administrators have said that the  
16 production of documents would be -- it would identify people  
17 who are -- have little connection to the historical  
18 operations of BSGR. But the only example that they've given  
19 of that is an email of that redacts the email address of  
20 Asher Avedon, who was actually the president and the CEO of  
21 BSGR Guinea, a key subsidiary of BSGR. So, that's clearly a  
22 person with a major connection to the historical operations  
23 of BSGR.

24 And then I think Your Honor asked also about  
25 Comey. For example, we know that personal email addresses



1 of Dag Cramer are being used from a company called Norn  
2 Vernandi. Where that's located, where he's sending that  
3 from, that's information that is important and that goes  
4 directly to the Comey inquiry about where a director of BSGR  
5 is actually conducting his BSGR-related business through  
6 this other country. So, that kind of information is  
7 actually relevant to Comey.

8 MR. HYMAN: Mr. Kramer's email addresses or the  
9 one that was just referenced are business email addresses  
10 and those are not being redacted. We are also happy to  
11 stipulate to the identities of various members of the board  
12 of directors at certain points of time and where they're  
13 located. What we're talking about here, though, is personal  
14 email addresses of anybody that may be mentioned in any one  
15 of these documents and their nationality.

16 All we are saying is that the general rule for  
17 that type of information, which we really -- other than in  
18 some very certain -- you know, particular circumstances  
19 might be relevant, although whether somebody's Swedish or  
20 not, I'm not sure that that's more relevant than where  
21 they're actually operating --

22 THE COURT: No, but it might give you some  
23 indication as to where they may conduct business, right? I  
24 mean, so I don't think when you think about discovery, the  
25 old test used to be reasonably calculated to lead discovery

1 of admissible evidence that's been thrown over the transom.  
2 But the idea is it doesn't make sense. Would it be helpful  
3 when weighting all the costs and burdens?

4 So, I mean, the way I think of it is if you were  
5 doing this in a domestic case, you'd have the email  
6 addresses on there. You might have them for attorneys' eyes  
7 only because you wouldn't want to have an unwarranted  
8 personal intrusion. But otherwise, everybody's in the  
9 situation where you're going to have to assess the email  
10 circumstances and the address email by email, person by  
11 person. And that sounds like a bad thing for you, it sounds  
12 like a bad thing for them because it's contextual -- in the  
13 case it may be contextual. In the email -- and so I don't  
14 know that you...

15 So, for example, if there's a personal email of  
16 somebody who's on a CC, who never shows up other documents,  
17 well, in hindsight, that will turn out to not be necessary  
18 for the case. But if there are personal emails that recur  
19 numerous times from folks who were involved in BSG business,  
20 and there's a question for purposes of Comey as to well,  
21 where are they doing things? Are they in Israel? Are they  
22 in Guernsey? Are they in Switzerland? Are they somewhere  
23 else? Where are they actually doing things? And there's  
24 just where their personal residence is, and we have to put  
25 together sort of a mosaic picture of things, then it would



1 be relevant.

2 And so, I think as a matter of discovery because  
3 you can't figure this stuff out ahead of time, it seems in a  
4 domestic case to be perfectly appropriate, but I would take  
5 protections so that people's individual emails are not  
6 floating around everywhere in the record of the case because  
7 that would be, I would think, in appropriate. It would be  
8 our own little American domestic version of protecting  
9 somebody's privacy.

10 So, but I do think that as a general matter, when  
11 you have emails and they're business emails, and then  
12 somebody's personal information because they have a person  
13 email but it deals with BSG business, we've generally viewed  
14 it as fair game.

15 MR. HYMAN: Your Honor, in virtually every context  
16 we're not talking about eliminating or redacting the  
17 person's name. All we're talking about is redacting an  
18 email address and references to nationality.

19 THE COURT: No, I know, but that wouldn't happen  
20 in a domestic case.

21 MR. HYMAN: We don't have GDPR to contend with in  
22 a domestic case.

23 THE COURT: Yeah, but I can make a finding that  
24 it's relevant and appropriate because I would make that  
25 finding in a civil case if somebody required me to make a

1 finding one way or the other.

2 MR. HYMAN: But is it as to somebody that has  
3 nothing to do with Comey whatsoever --

4 THE COURT: But your hypothetical picks your set  
5 of facts that you want. They can pick a hypothetical that  
6 picks their set of facts and say we have somebody who's  
7 doing a lot of BSG business. It turns out they use a  
8 personal email, and it turns out their location is actually  
9 relevant to Comey. I don't know. So, that's why in  
10 discovery you would permit it and you would take protection.

11 So, unless there's something I'm missing, I will  
12 make that finding and then I will say (indiscernible) to  
13 establish United States law despite finding that it is  
14 appropriate and necessary for the case to proceed as a  
15 matter of discovery, that all personal emails will be  
16 treated as if they're under seal so that their private  
17 information is protected, and that we will have a discussion  
18 when we got to the merits to talk about how to use or not  
19 use any individual.

20 Because, for example, I can't imagine that every  
21 single personal email in any of the documents that are going  
22 to be produced is going to turn out to be relevant. It's  
23 going to be a much smaller subset, if at all, and then we'll  
24 talk about that in a context that's appropriate.

25 MR. HYMAN: Yeah. I think, Your Honor, our



1 position was not that we'd never produce personal email  
2 addresses where they might be relevant. What we were  
3 suggesting is that it should be the exception rather than  
4 the rule --

5 THE COURT: I didn't hear a proposal that would  
6 allow... I mean, then it becomes something where you get to  
7 decide where you think it's appropriate or not, and I don't  
8 know how to police that. And I don't even know, in my  
9 thinking about it, how you do that ahead of time. You can  
10 look at it and say, well, it seems to be kind of an  
11 important person so it's in the yes pile. Well, this person  
12 seems to be less important so it's in the no pile. And then  
13 that might be in the initial phases of review. By the time  
14 you do your later phases of the review, the person who's in  
15 the yes pile turns out to be not so yes, and the person in  
16 the no pile turns out to be not such a strong no. So --

17 MR. HYMAN: But that person will be identified in  
18 the document. Again, we're just talking about the personal  
19 email addresses.

20 THE COURT: I know but then we're talking about  
21 huge amounts of money to re-review everything for reasons  
22 that -- again, we wouldn't do in a domestic case because we  
23 would find that to be not valuable and not an efficient use  
24 of anybody's time. So, again, I'm going to make that  
25 finding that for purposes of the case, and that will go in

1 the order, and then I think that addresses the GDPR issue.  
2 But notwithstanding the fact that I find it necessary for  
3 the case and, therefore, to address the GDPR protocol, I  
4 think it is nonetheless appropriate to treat those personal  
5 emails as things under seal for purposes of the case, and  
6 any request to use them in open court will require  
7 permission and we'll have an appropriate vetting process  
8 when we get closer to the merits.

9 All right, so that's my ruling about Dispute  
10 Number 2. And then I think we have Dispute Number 3.

11 MS. BALTER: The third issue just has to do with  
12 what the partly redacted information under Category 2, the  
13 circumstances under which they provide redaction. The joint  
14 administrators have now agreed to provide an explanation  
15 when a category two redaction is made, but they've objected  
16 to specific language in Vale's protocol which says that such  
17 redactions should only be made in limited and exceptional  
18 circumstances. (indiscernible) is perfectly appropriate and  
19 necessary to define the circumstances under which Category 2  
20 redactions can be made. They haven't really articulated a  
21 basis for their objection to that language.

22 THE COURT: So, Category 2 is the one where  
23 there's already been a finding of the information that's  
24 relevant to the case and so -- but there's a then -- what we  
25 think of as a more extraordinary or unusual invocation, say,



1 notwithstanding it's relevant to the case. So it really  
2 isn't covered by GDPR's protocol at this point because  
3 there's been a finding that's necessary or a concession  
4 that's necessary to the case -- that it is still nonetheless  
5 appropriate to redact.

6 MS. BALTER: Right. And they're required to  
7 provide an explanation under that kind of circumstance where  
8 they think it's not relevant and necessary. And we want to  
9 just make very clear that that's a limited and exceptional  
10 circumstance, and so that's why we've included that  
11 language.

12 MR. HYMAN: Your Honor, it's a subjective  
13 characterization. We're agreeing. I don't know that we've  
14 come across any instance where we've redacted Category 2  
15 information. What we're objecting to, though -- it's not  
16 describing our reasons for doing so, it's just the  
17 characterization of it being extraordinary... I'm not  
18 forgetting the language. Limited and exceptional.

19 THE COURT: I don't want to get hung up on an  
20 adjective but at the same time I do think if it's necessary  
21 for the case, I'll use what I think is legally appropriate.  
22 The presumption is it's going to be produced. So I'm not  
23 going to call it extraordinary and unusual but that's the  
24 presumption because that means that there is no GDPR issue  
25 because there is a concession and, if necessary and you want

1 to put it in the order, I'll make a finding, that this is  
2 appropriate and necessary for the case.

3 So, if that's the circumstance, then the  
4 presumption is it should be produced. And where the  
5 presumption is something -- that means there is a burden on  
6 the side who wants to rebut that presumption to come forward  
7 with specific evidence and explanation as to why that's not  
8 the case.

9 So, I won't require the adjective but I will have  
10 described it in court as such and I think that that,  
11 hopefully, should moot out that issue. So, for purposes of  
12 the order, I think what you could say is that if something  
13 is in Category 2, which means it's understood to be  
14 necessary for the case, there's a presumption it's going to  
15 be produced. And to the extent that the foreign  
16 representatives, the joint administrators believe that it  
17 should not be produced, they will justify their withholding  
18 of the information.

19 MR. HYMAN: I think that's what the protocol  
20 already says, Your Honor.

21 THE COURT: All right, so that's that. So, what  
22 else do we have to -- after going through our long list --  
23 and I'm very happy that my list of things mirrored your  
24 list.

25 MR. ROSENTHAL: So, Your Honor, I think now we



1 just have some miscellaneous things with regard to the  
2 productions, many of which are kind of red flags that came  
3 up when Mr. Peters was speaking that I wanted to address  
4 with the Court, and also some proposals in terms of going  
5 forward that we have by some of the things that were said.

6 I think to start with, I was a little surprised,  
7 Your Honor, that Mr. Peters isn't here now. He never said  
8 this morning after he spoke and we deferred it to this  
9 afternoon, that he wouldn't --

10 THE COURT: I don't want to -- again, every side  
11 gets to present their case how they want to present their  
12 case. And if I find it to be a problem that somebody's not  
13 here, then it's a problem and I'm not going to stand on  
14 ceremony, so I don't want to get bogged down in that.

15 MR. ROSENTHAL: That's fine, Your Honor. This is  
16 my segue into saying what I did say this morning briefly  
17 before we got into other issues, that there are some serious  
18 inconsistencies with what the Court continues to be told  
19 over time, you know, both in the letters, by Mr. Peters when  
20 he stood up -- not as an officer of the Court but not under  
21 oath. And maybe that's something that in the future we need  
22 to rectify, and today --

23 THE COURT: Well, I will say I understand him to  
24 be counsel, is that correct?

25 MR. HYMAN: I don't think he's a lawyer. No, Your

1 Honor, he is a forensic partner at BDO in the Accounting  
2 Group.

3 THE COURT: I consider that to essentially be a  
4 proffer by the joint administrators as to what the truth is.  
5 And so if somebody stands up in court and represents  
6 something and they do so -- to the extent it turns out not  
7 to be accurate, they do so at their peril. So, I don't know  
8 that I need to go crazy on the evidentiary aspect of it.  
9 When we're talking about discovery, if we did that for  
10 discovery we'd all be out on the ledge very, very quickly.

11 MR. ROSENTHAL: That's totally fine. I just  
12 wanted to point out, Your Honor, that there are some things  
13 and I do want to mention them now.

14 THE COURT: Right, yeah, so let's get to the meat  
15 of that.

16 MR. ROSENTHAL: So, what Mr. Peters said is, he  
17 said that there's a team of 15 people with (indiscernible)  
18 for GDPR and then it goes to Duane Morris after that for  
19 privilege. And Your Honor may recall that at our last  
20 hearing, before I had a chance to raise some concern, the  
21 Court sua sponte expressed concern that documents were  
22 having a GDPR cut or redaction before counsel was looking at  
23 them.

24 And Your Honor said on Page 14 -- you said, "Let  
25 me back up for a second. So, does that mean for the



1 categories of documents that Duane Morris does not have yet,  
2 that they are going to eventually obtain possession of those  
3 in un-redacted form? I mean, then there's no falter between  
4 what exists and what Duane Morris will eventually have  
5 access to." And Mr. Hyman said, "That's absolutely correct,  
6 Your Honor."

7 But now we're being told that the GDPR review is  
8 coming before the Duane Morris review, so it seems exactly  
9 what the Court was concerned about we were concerned about  
10 last time, and that we were all assured was not happening.

11 The second and related thing --

12 THE COURT: Well, let me sort of see if I can  
13 drill down on that. So, the idea is that there's counsel in  
14 the case and counsel is in a position to do things like make  
15 proffers and make representations to officers of the Court.  
16 And my comment notwithstanding about not standing on  
17 ceremony as to evidence in discovery disputes, we did talk  
18 about what Duane Morris is going to see as counsel and what  
19 that looked like and how it was going to work so that they  
20 basically were in a position to make representations because  
21 they really had knowledge of things from sort of the  
22 beginning to the end. So, what can you tell me about that?

23 MR. HITCHING: Your Honor, Jarret Hitching. Just  
24 to address the first point. Documents that are coming to  
25 Duane Morris for purposes are -- we can see what is flagged

1 for redaction. So, the text -- the redaction text is  
2 shaded, we can see the underlying information that is being  
3 masked.

4 THE COURT: So, you know what's been flagged but  
5 you can see what's been flagged?

6 MR. HITCHING: Correct. Correct. And, in fact,  
7 we have the ability to take that designation away if we deem  
8 it inappropriate.

9 MR. ROSENTHAL: So, that's obviously reassuring,  
10 but then the other thing is, Your Honor -- and I saw it  
11 again last time we tried to drill down and get a sense of  
12 the sequencing -- it seems to me like if it's already being  
13 redacted from GDPR with the shading and not the full blacked  
14 out redaction and then they're looking at it for whatever  
15 purposes, that -- who's doing the review? Because it's  
16 inconceivable --

17 THE COURT: You don't get to tell him how to do  
18 things. I want to make sure that counsel in the case has  
19 enough information, they can make their appropriate  
20 representations and that there's not any sort of wall that  
21 means that they're sort of all buying sort of  
22 representations and nobody's sort of checked them.

23 But I am not going to micromanage how they do  
24 this. It's not a good place for a court to be. It's not,  
25 frankly, something that... What I care about is the



1 results. And so I think as to the substantive issues we've  
2 talked about, you've raised a number of issues, I've agreed  
3 with, frankly, most of it, and so that's what I'm going to  
4 worry about. I'm going to worry generally about that I have  
5 counsel on the case who can speak authoritatively. I'm  
6 satisfied with the statement that's been made. If there's a  
7 specific cause or reason in the future to revisit that,  
8 we'll take a look at it. But I have no desire to start  
9 finding out in what sequence they're doing things. That's  
10 not -- it's just not a productive conversation. We have  
11 enough things to get through.

12 MR. ROSENTHAL: My apologies, Your Honor. I think  
13 I was unclear in the way I spoke then. Because my  
14 understanding from what was being said is that therefore  
15 counsel is only being given the documents that BDO has  
16 already decided are relevant to be shown to counsel. That's  
17 where my concern lies, because --

18 THE COURT: My understanding is that -- is,  
19 listen, people hire out folks to review documents and  
20 there's also AI that goes on these days as opposed to  
21 associates or contract attorneys sitting in large warehouse  
22 for months on end. And so that is what it is. And, again,  
23 when you are -- the way that discovery responses are  
24 supposed to be done -- there's a certification and the  
25 person who certifies is the person who steps up to the plate

1 as to the process. And so I assume that the discovery  
2 responses here will be no different. Somebody will have to  
3 certify what those responses are. If it's a BDO person or  
4 it's a BSG, whoever the person is, and then there are fair  
5 questions in discovery, in depositions, if you want to go  
6 that route, need to go that route about the process.

7 But, again, I don't think now is the time to --  
8 you can talk offline but I don't think now is the time in  
9 court to have sort of an open inquiry about well, how are  
10 you complying with your discovery obligations? It sort of  
11 echoes some of whatever I said before, which is, you know,  
12 there are things that are the backdrop there and the very  
13 air we breathe and the world we live in about how -- what  
14 people's obligations are. And so that is what it is, and if  
15 people don't behave accordingly then things go badly.  
16 Eventually. Maybe not now, but that's how it goes.

17 MR. ROSENTHAL: Well put, Your Honor. And I just  
18 think that it just caught us by surprise in light of  
19 representations made last time, but we'll move on.

20 THE COURT: All right.

21 MR. ROSENTHAL: The other thing that concerned us  
22 with regards to what Mr. Peters said when we were first told  
23 there would be 37,000 documents reviewed and then produced  
24 by a week ago, and now they have 425 ready now, in a week  
25 another 516. And then he said that as they're reviewing the



1 next 28,000 they'll start uploading the next batch of it,  
2 was what he said.

3 And, again, it just concerns us that this is being  
4 drawn out. We're going to have production going on to next  
5 year. Because last time, on Page 71, we were specifically  
6 told it's all uploaded and the review's underway, and just,  
7 you know --

8 THE COURT: Well, I have the language of the  
9 letter on August 27th saying it will then be reviewed and  
10 gathered. Here's my concern. My concern was profound when  
11 I read that things were going to be produced next week and  
12 then things weren't produced. Because the purest -- the  
13 surest way to make progress in a discovery dispute is to  
14 start producing things so we can actually have substantive  
15 discussions. It's like the surest way to deal with a  
16 secured creditor is to start paying them. They don't want  
17 to talk to you until you start paying them.

18 And so my thought is -- I'm not naïve enough to  
19 think this is the last discovery conference we're going to  
20 have, but that I want to see production and that should also  
21 go in the order which is that what was said about what was  
22 going to be produced is actually in the order. Because,  
23 frankly, there were things that were said last time and it  
24 didn't happen, and we need to have these things in an order  
25 because I don't want to -- it can't be a moving target.

1           And so my goal is to get documents produced,  
2       reviewed and produced so that we can get to the end. So,  
3       there has still been a very, very modest production. We're  
4       talking about 211 new documents. So, and then other  
5       conversations you're talking about 1.2 million, 28,000,  
6       37,000, all sorts of very -- much larger numbers that,  
7       frankly, are hard to even fathom given that we have 211  
8       documents thus far. So, substantial production needs to  
9       happen soon, it needs to happen now. Nothing seems to be  
10      done on a rolling basis, which is what was represented was  
11      going to happen. I have representations from BDO today that  
12      they were start producing things daily. You know, the  
13      representations are there so that courts don't have to be  
14      make rulings, but then if the representations are made and  
15      they aren't followed through on, then courts need to make  
16      rulings.

17           So, rolling production is so ordered. It is  
18      required and must occur. And it will occur on the schedule  
19      that was represented in open court by BDO, who's working for  
20      the joint administrators, and that's what the order will  
21      reflect.

22           And so I understand you're understandably nervous  
23      about this and I don't know how to square what's gone on in  
24      this case with the notion of a Chapter 15 proceeding  
25      expeditiously, but Chapter 15 cases I'm discovering are much



1 like Chapter 11 cases. They all have their own  
2 personalities and we deal with what we -- what the case  
3 presents.

4 And so the elephant in the room that has not yet  
5 been mentioned today is what happens with the District Court  
6 and the request to -- that's been made that hasn't been  
7 ruled on, presumably, and the agreement to stay that through  
8 August -- through October 31st? And the answer is I don't  
9 know. And everybody preserves all their rights as to make  
10 any arguments based on everything that's gone on. And so  
11 the only thing I assume is that if the October 31st date  
12 comes and goes, that you all will figure out how you want to  
13 handle it so we can have some sort of -- we know what the  
14 process looks like. Are people running here? Are they  
15 running to District Court? How are we doing it? And to  
16 work that all out. That's so -- that -- we need to talk  
17 about that. Maybe now is as good a time as any, or maybe we  
18 need to get together towards the end of the month.

19 MR. ROSENTHAL: Well, I mean, on that issue Vale's  
20 position is clear, given all that's transpired or the lack  
21 of transpiring. We don't consent and we think that there's  
22 not anywhere near a basis for the Court to enter any kind of  
23 injunctive relief.

24 But on the subject of the productions, we actually  
25 have a proposal, Your Honor, that hopefully removes as much

1 of this as possible from the Court.

2 THE COURT: Well, before we segue from the  
3 injunction issue --

4 MR. ROSENTHAL: Yeah.

5 THE COURT: -- their -- right, so everything that  
6 is sent to this Court is sent to us from the District Court  
7 on an order of reference. So, here you have a live District  
8 Court proceeding, a live proceeding in the Bankruptcy Court,  
9 which begs the question where should the issue of injunctive  
10 relief be addressed if it needs to be addressed? And so we  
11 need to work our way through that. So, my desire is to  
12 certainly -- if the District Court -- the District Court  
13 will no doubt be familiar with the dispute based on the fact  
14 that it has things presented to it. It doesn't have the  
15 discovery issues that we've been dealing with here, but  
16 there's plenty of record of that.

17 If it's choosing to not recognize things, well,  
18 then we're in one world. If it chooses to recognize the  
19 judgment, it would seem, since that would -- that the  
20 District Court should decide the first instance, whether it  
21 wants to refer that -- any injunctive request down here or  
22 certainly address it itself.

23 And so my thought is that when you -- that that  
24 probably is something to tee up with the District Court when  
25 you hear from the District Court as to how to address that.



1 That would be my -- that's sort of my -- been my assumption,  
2 but I realize the only person I had expressed that to is  
3 myself internally, not out loud, and that I should share  
4 that with you. I think I've sort of hinted at that in the  
5 past, just because that's kind of the way it sort of makes  
6 sense in terms of -- we're a court that really gets our  
7 jurisdiction from the District Court, and if the District  
8 Court has a live case.

9 And I think Judge Glenn has done a similar thing.  
10 He said you should go to the District Court. I think it was  
11 another Chapter 15 where there -- and I don't remember the  
12 name of the case, where there was a question about  
13 injunctive relief pending something that the District Court  
14 was doing. And he said, well, the District Court would know  
15 I have the case. They are well-versed, so we don't have  
16 some of the -- necessarily all of the time saving economies  
17 where a District Court is sort of -- you're trying to  
18 withdraw the reference and they say, listen, you've been  
19 dealing with this forever. I just met you people and it  
20 makes sense to stay in Bankruptcy Court. But even then, the  
21 District Court gets to decide when there's a motion to  
22 withdraw the reference.

23 So, my -- again, this is my default, which is  
24 almost treated like a motion to withdraw the reference. You  
25 mentioned that the District Court -- if the District Court

1 thinks it would be helpful for the Bankruptcy Court to do  
2 it, I'm happy to do it. But at the same time the District  
3 Court will have its own independent basis of knowledge, and  
4 then there'll be other things you would talk about. But,  
5 frankly, it may work the other way, too -- is if I dealt  
6 with it, you may be telling me something about what the  
7 district Court's decision and various things.

8 So, that's my default. If somebody wants to make  
9 a run at it, you can let me know but --

10 MR. HYMAN: Your Honor, the status in the District  
11 Court action has not changed. There has never been a  
12 hearing before Judge Broderick. He has --

13 THE COURT: But I don't know that he's required to  
14 have a hearing.

15 MR. HYMAN: And he may not be, but I'm not sure  
16 that there's a real venue to seek injunctive relief there.  
17 I suppose -- I suppose we could but --

18 THE COURT: Well, but there's no venue to seek it  
19 here because there's nothing right now for you to... I  
20 mean, this is all going to come up when the District Court  
21 issues a decision if the decision is to recognize a judgment  
22 which allows them to move forward. At that point, you'd  
23 have to run somewhere. You'd have to run here or you'd have  
24 to run there.

25 And so what I want to avoid is the unnecessary



1 process related fire drill where -- well, we're going to run  
2 to both courts and we'll see what happens, or we're going to  
3 make a guess and we don't really know what Judge Lane may  
4 think or what Judge Broderick may think. And so I'm trying  
5 to avoid that kind of inefficiency by telling you what my  
6 default is and to say that if you get a decision from Judge  
7 Broderick that would trigger a need to file such a motion,  
8 that I would think that you would -- whatever his procedures  
9 are -- find a way to tee that up and ask him and say, we'd  
10 like to seek. Right? Because you can do that in a civil  
11 case. We want to seek a stay.

12 And so it's not something the District Court is  
13 unfamiliar with. And just say, we -- just to fill out the  
14 picture, we've been doing these things in Bankruptcy Court,  
15 and the bankruptcy judge said he'd certainly be happy to  
16 help but certainly recognized that in the first instance the  
17 District Court should get to decide if it wants to address  
18 the injunctive piece itself.

19 And there's certainly -- there's a civil  
20 injunction piece to any judgment. There's also a -- you  
21 know, there's an injunctive piece to Chapter 15. There's a  
22 couple ways to do this. So, but again, all my jurisdiction  
23 flows from up the street. And so respectful of that fact,  
24 and trying to -- I want to raise it now because I don't want  
25 to impose on the parties or Judge Broderick in -- if we

1 don't talk about it and then we all find ourselves in a  
2 moment of panic running around figuring out what are we  
3 doing and where are we doing it? That doesn't serve  
4 anybody's interests.

5 MR. HYMAN: Yeah. I think the only concern that  
6 we have, Your Honor, is just given the lack of attention  
7 that we've gotten from Judge Broderick, I don't know that  
8 we're going to get a response. We can certainly try and --

9 THE COURT: Well, I don't know that they -- for  
10 them to respond to at this point. The matter's briefed and  
11 he's going to get to it, and he may be in the middle of a  
12 large criminal trial, he could be doing any number of  
13 things. And so I'm unaware of any pending request, and I'm  
14 sure he'll deal with it completely appropriately. And so,  
15 you know, you may want to write all your letters and have  
16 them ready to go for whenever -- if that eventuality comes  
17 up.

18 You also -- again, I won't tell you how to  
19 practice, you know what you're doing. But, you know, I can  
20 imagine a circumstance where if he permits letters to  
21 chambers to say, Judge, we want to make you aware of -- and  
22 give you a refresh on where we were. We've already told you  
23 we had an original deadline of an agreement. We updated  
24 that and we told you about that too. And now we're telling  
25 you that we don't have an agreement as of October 31st. If



1     this happens, then the Debtor is going to seek a stay, Vale  
2     will seek to oppose it. There's a question about what  
3     appropriate forums that should all be heard. This is what  
4     we can tell you about that. And you want to do that to be a  
5     snowplow and clear the way for the eventual discussion on  
6     the merits.

7             And, again, I'm happy to be -- to address things  
8     as is appropriate. But, again, I'm very respectful of where  
9     my jurisdiction comes from and the fact that he has a case  
10    between these two parties on the merits and has the ability  
11    to grant a stay or not grant a stay based on his considered  
12    judgment and looking at issues. So, that's why. And so  
13    I'll let you address that as you think appropriate.

14            MS. SCHWEITZER: Your Honor, I appreciate you  
15    raising it ahead of time and we particularly would want to  
16    avoid a TRO type situation given we all know (indiscernible)  
17    looming. I think the one thing just to put out there, and I  
18    completely respect your view of looking toward the District  
19    Court, is that there is a lot of history here. And the  
20    original stay that we sought was a TRO pending  
21    (indiscernible) commission hearing, things like balance of  
22    the equities and uproot merits and all of that to flow into  
23    it.

24            And to go to this forum, I think the one thing  
25    that I would not want to be perceived is that you were

1 neutral or had no view on those types of positions.

2 THE COURT: No, I think you can safely represent -  
3 - and there's a transcript -- that if called upon to make a  
4 ruling, I would make a ruling. I'd be happy to do so. And  
5 certainly if the District Court thinks it would be of  
6 assistance for me to do so, I'd be happy to have that matter  
7 added to my calendar.

8 And so -- but at the same time, my -- I wouldn't  
9 say reluctance but my raising it now is to express my sort  
10 of respect for sort of the different overlapping  
11 jurisdictions and, again, where the Bankruptcy Court  
12 jurisdiction comes from. So, my thought is the appropriate  
13 -- and I am putting something in a sense on Judge  
14 Broderick's plate in the sense of then you're going to go  
15 ask Judge Broderick, presumably, how he wants to handle it.  
16 But I think -- that, I think, is appropriate in the sense of  
17 -- given all the facts and circumstances.

18 But, no, I'm not reluctant. I'm just trying to be  
19 respectful. And, again, I think it's in everyone's interest  
20 to know what the process looks like because it seems pretty  
21 clear based on things that have been said over the last  
22 couple of hearings, that if something happens after October  
23 31st, there's going to be a bit of a fire drill on this  
24 particular issue and people want to know what forum, where  
25 they should go and how to handle that.



1           So, I think I'll trust you all on your considered  
2 professional judgment to tee that up as you think  
3 appropriate, whether it's a letter or something else, or  
4 your request for a status conference. And, again, that goes  
5 to Judge Broderick's ways of doing business and I'm not  
6 familiar with his local rules and his procedures for his  
7 chambers.

8           MR. ROSENTHAL: Ultimately, Your Honor, it's the  
9 joint administrators' decision on whether to file any kind  
10 of motion and how they would want to proceed. You know, we  
11 would just file an opposition and go from there to wherever  
12 it is, because, frankly, there's been a history.

13           THE COURT: No, no, but what I'm trying to do is  
14 I'm trying to give you the speech that I would give you if  
15 somebody filed that motion here, and then I got you all on  
16 the phone and I said, well, here's my issue. And so this is  
17 my -- I have very few powers of prophecy, but this is my  
18 prediction as to what exactly that speech would look like.  
19 And so then you would not only -- they would have that  
20 motion, but then you would all be running to the District  
21 Court to say the Bankruptcy Court says, what would you like  
22 to do? And so I'm trying to cut that off and essentially  
23 tell you where I'm going to be, because I can predict that  
24 with almost -- almost certainly at this point, just given  
25 the circumstances.

1 MR. ROSENTHAL: I mean, ultimately, Your Honor, if  
2 they wind up filing somewhere, that would probably put them  
3 on a clock that they haven't put themselves on so far.

4 THE COURT: Well, again, we'll get to it. I'm  
5 just -- you all do what you think is appropriate but I don't  
6 want anyone to be surprised if a motion gets filed here and  
7 nobody's talked to the District Court, you pretty much know  
8 exactly what I'm going to say. And so that was my reason  
9 for raising it. All right, so --

10 MR. ROSENTHAL: I have a proposal now, Your Honor.

11 THE COURT: Sure.

12 MR. ROSENTHAL: Because I do think that it is  
13 probably not the most exciting part of the Court's calendar  
14 to have monthly check-ins whereby things happen.

15 THE COURT: We do whatever walks in the door. But  
16 listen, I recognize it's also not, frankly, what you want to  
17 be spending your time on either.

18 MR. ROSENTHAL: And it also shouldn't be where we  
19 get those through documents briefed out to us the week after  
20 the hearing and we get maybe a (indiscernible) for the three  
21 weeks subsequent, and we kind of are wondering when's the  
22 rest coming?

23 So, what I would propose and I think this is  
24 pretty low-hanging fruit, Your Honor, is if the joint  
25 administrators at the end of every week give us a weekly



1 report on where things are in discovery. What's been done  
2 so far, what's in progress, what hasn't been started, and  
3 what their estimate is on the completion date of discovery.

4 So, that way we are not kept in the dark. We  
5 don't have to wait and write a letter to the Court and say  
6 we've heard nothing over the past month. So, that's kind of  
7 low-hanging fruit number one that I would suggest, just to  
8 keep the trains moving and communications open.

9 THE COURT: All right. Any thoughts?

10 MR. ROSENTHAL: I can read those again if you want  
11 that list of four.

12 MR. HYMAN: Your Honor, I think that you were  
13 clear in what you were ordering when you were ordering  
14 rolling production.

15 THE COURT: I know but things haven't happened  
16 that way.

17 MR. HYMAN: And I understand that.

18 THE COURT: So --

19 MR. HYMAN: And we will now have an order --

20 THE COURT: Well, I know, but I thought we had an  
21 order before. So, it was from the bench but it was still an  
22 order and it didn't seem to get the trick done.

23 In a former life, I was involved in a Freedom of  
24 Information Act case that was enormous. And while the judge  
25 was incredibly patient in the case, he also didn't want to

1 have dealings every day with the parties. And so status  
2 reports were a useful thing to do, so that hearings didn't  
3 trigger the exchange of information that should've otherwise  
4 been occurring.

5 So, I'm inclined to think that a short letter that  
6 refreshes what we've been talking about -- we essentially  
7 have three categories that are in the August 27th letter.  
8 You sort of gave a refresh today as to that. And Category  
9 1, presumably, is done and then we're on to Categories 2 and  
10 3. I've seen different -- I've heard different numbers, but  
11 I would think that that makes sense and is not a big...  
12 Frankly, it'll save as much attorney time as it'll cost in  
13 terms of requests for updates.

14 I mean, I've gotten plenty of letters in this  
15 case. And so my thought is that this is a letter that  
16 actually may save the need to write future letters. So, I'm  
17 inclined to do that. But I realize this is the first of  
18 several proposals. So, maybe -- hear them all so we can  
19 figure out where we are.

20 MR. ROSENTHAL: So, Proposal Number 1 was the  
21 weekly status reports that, hopefully, just opens a line of  
22 communications. The second thing was, because I don't want  
23 to have a dispute down the road that leads to, you know,  
24 requiring court intervention and be assured of well, we're  
25 far along on this process -- is there should be an exchange



1 with us, as happens in a lot of cases, of what are the  
2 search terms that they're using, given that Mr. Peters  
3 mentioned that they're using search terms and they're trying  
4 to figure out how to tweak the search terms to get the right  
5 number of documents to review.

6 I just think within a week, let's get a list of  
7 those search terms so that we can have a dialogue if there  
8 are any concerns or things that we'd like to propose before  
9 we wind up in a dispute in two months when we first find out  
10 them. So, I think that, again, is just relatively low-  
11 hanging fruit that's not uncommonly done.

12 THE COURT: So, that's two. What's three?

13 MR. ROSENTHAL: And then the third thing is, and I  
14 recognize this won't be a weekly thing given that now  
15 they're going to have go back and gather the documents from  
16 the other custodians that they had not started to gather  
17 from. But I think let's say three weeks from today, I think  
18 that weekly update should have a status support on where  
19 they are with gathering the documents from these other  
20 custodians so we don't, in two months, have to go to the  
21 Court and find out that they're nowhere yet, especially if  
22 we might be hit with a TRL in a month. So, again, just  
23 trying to anticipate things.

24 I think these are all pretty low-grade, low-impact  
25 requests that just, hopefully, avoids disputes that have to

1       come to the Court while waiting for a Court dispute to find  
2       out information.

3               THE COURT: All right. And did you have three or  
4       four? I thought I heard four. I'm not soliciting a fourth  
5       if you don't have a fourth currently.

6               MR. ROSENTHAL: Well, those are the only three.  
7       The only fourth suggestion that I have is in the event that,  
8       you know, next time we're met with new factual claims that  
9       somehow affect what the discovery obligations should be.  
10      They put in affidavits this time from Mr. Callewart. And I  
11      think next time --

12              THE COURT: I'm not going to micromanage future  
13      disputes. So, it's hard enough to manage present disputes.  
14      So, we'll see how it goes.

15              But as to the first three, those sound reasonable.  
16      After all, people in discovery, if you have -- after you get  
17      your document discoveries, you wait to take your deposition  
18      and introduce your civil case, and then you depose the  
19      person who signed the discovery responses and you say, when  
20      you looked, how did you look? Where did you look? What  
21      search terms did you look? So, that seems to be fair game  
22      for purposes of civil discovery.

23              And the other one seems to me just -- we're going  
24      to end up having that conversation at some point. And as  
25      part of the ongoing meet and confer obligation under the



1 Federal Rules of Civil Procedure that really come into play  
2 for any contested matter, which this pretty clear is -- that  
3 seems to be consistent with that. But let me hear anything  
4 from the --

5 MR. HYMAN: I don't think we have any objection,  
6 Your Honor. You know, we will provide weekly updates. I  
7 don't know whether a less formal email is acceptable rather  
8 than a formal letter but --

9 THE COURT: Yeah, I think it's exchange of  
10 information.

11 MR. HYMAN: We're happy to provide an update. We  
12 will -- in those weekly updates, we'll provide updates on  
13 what the joint administrators have done to request and seek  
14 and produce documents from all the other parties that we  
15 spoke to today. As it relates to search terms, we've got to  
16 speak to the client but I don't anticipate a problem. I  
17 don't know that we can get that done by tomorrow. Mr.  
18 Rosenthal mentioned the end of the week...

19 THE COURT: It's designed to prevent a possible  
20 redo down the road, which is a disaster for everyone.

21 MR. HYMAN: That's not something we've ever tried  
22 -- we're not trying to hide that from anybody. That isn't  
23 an issue.

24 One clarification, though, I might ask Your Honor.  
25 You made the ruling earlier related to personal email

1 addresses and nationality. There have been a lot of  
2 discovery that had been undertaken and redactions that had  
3 been undertaken as -- through today, which were on reliance  
4 of the last set of documents that they had agreed to do.

5 THE COURT: Yeah, but you decided to produce it  
6 while they had their argument pending, and that's what  
7 people did to move past it. I'll let you try to work the  
8 practicalities of that out and you'll come to me if you  
9 can't figure it out. But that's a practical problem that  
10 involves, you know, numbers, how many documents, how many  
11 redactions, can you give them what they need in a narrative  
12 description as opposed to going back and re-redacting?  
13 There's lots of ways to skin that cat, so I'm going to let  
14 you have that conversation in the first instance.

15 I'm not going to -- I'm not going to sit here  
16 today and say you need to go back and re-redact. That's the  
17 traditional method of doing it. But I'm going to require  
18 you to meet and confer and propose suggestions on how for  
19 anything you've produced that implicates that ruling, how  
20 you're going to sort of true up the knowledge involved so  
21 that they have what I think is -- what's appropriate and  
22 consistent with the ruling.

23 So, re-redaction is one way to do that. It may or  
24 may not be the exclusive way to do that, depending on how  
25 things work and what the documents are. So, I'll ask you to



1 meet and confer on that, and everybody reserves their rights  
2 if, in fact, the true up process is not something that  
3 people can agree upon.

4 MR. ROSENTHAL: Your Honor, two more hopefully  
5 very quick issues. One is, in this first batch of 211  
6 documents that we got, there are a number of redactions not  
7 for GDPR but just simply redacted commercially sensitive and  
8 confidential information.

9 THE COURT: It's subject to the usual -- I mean,  
10 you know -- I don't know what to tell you. I don't have any  
11 briefing on it. You should meet and confer and, again, I  
12 don't -- I don't know what to tell you. There obviously  
13 needs to be a basis for it. If it's the business dealings  
14 of BSG, I don't know how it's not relevant, even if it needs  
15 to be subject to a protective order because it's  
16 confidential.

17 MR. ROSENTHAL: So, Your Honor, we resolved this I  
18 thought months ago when they were able to designate  
19 sensitive documents as AEO. And if there's not a privilege  
20 and there's not a GDPR issue, I don't know why anything is  
21 being -- it's just the confidentiality order doesn't  
22 contemplate it at all.

23 MR. HYMAN: Your Honor, we're happy to meet and  
24 confer with Cleary with respect to anything that's been  
25 redacted for those types of purposes.

1 THE COURT: I know, but this is -- the idea is  
2 that -- what are the rules of the road, right? So, if the  
3 rules of the road are flawed, then you're going to have to  
4 meet and confer about everything and then we're going to  
5 have 8 million more of these hearings. That's actually not  
6 the way the rules of the road are supposed to work.

7 So, if the rules of the road is that there's no  
8 appropriate basis to redact it, then there's no appropriate  
9 basis to redact it. So, that sounds like it's subject to  
10 potentially the bankruptcy rule that allows for sealing of  
11 confidential business information. But you file motions to  
12 address that and then we have discussions.

13 I'm not aware of any privilege, and I think we've  
14 already talked about an attorneys' eyes only procedure. So,  
15 I don't know why that wouldn't be used for that. That just  
16 seems to be a stubborn refusal to conform conduct to what  
17 we've already been talking about.

18 MR. HYMAN: We will go back and we'll take a look  
19 at those documents and we'll meet and confer.

20 THE COURT: All right. Well, you're going to go  
21 back and you're going to produce them attorneys' eyes only  
22 with that information un-redacted.

23 MR. ROSENTHAL: So, the last issue, Your Honor, is  
24 just to give the Court a heads up on something that I fully  
25 expect that we will have a productive conversation with



1 counsel for from the joint administrators. But I think last  
2 week, we got served with document requests and contention  
3 interrogatories asking for our evidentiary basis essentially  
4 for what we intend to present to the Court probably many  
5 months from now in our ultimate opposition, and for  
6 contention of interrogatories that are incredibly premature  
7 and ultimately will be revealed in our objection that we  
8 file. I've got to talk to him about timing but --

9 THE COURT: I'm not -- A, you're going to meet and  
10 confer. I don't have any -- listen, I prepare for hearings  
11 just the way everybody else prepares for hearings. I have  
12 numerous pages of notes and notes on notes. I'm not going  
13 to go on the fly. So, we're going to have to deal with it.  
14 You should talk to each other. But this is what happens  
15 with discovery, is -- is if there are real problems in  
16 discovery, and there have been real problems with discovery  
17 here, people are -- there's not the level of cooperation and  
18 ability to work effectively past these issues.

19 So, again, I'm not telling you what you have to  
20 do. I'm saying you need to meet and confer. But --

21 MR. ROSENTHAL: Absolutely. We plan to. I just  
22 wanted to give the Court a heads up in case we have to file  
23 a Protective Order Motion next week.

24 THE COURT: I know. It's just that since we've  
25 gone through a lot of things, there's only so much we can

1 really do without a more developed record.

2 MR. ROSENTHAL: I'm not expecting any guidance or  
3 any decisions. I'm just -- I don't want the Court to be  
4 surprised if we file a Protective Order Motion. But,  
5 hopefully, they recognize that contention interrogatories  
6 are premature and we agree to a date in the future.

7 THE COURT: I thought there's some authority about  
8 when in the process that should happen, but I don't have  
9 sort of the sort of Black's Law Dictionary kind of rule  
10 handy rattling around in my brain. But I mean, the practice  
11 is generally to have those things come later after  
12 discovery. But, again, you all will fill me in as I need to  
13 be.

14 So, I want to make sure I understand what's coming  
15 out of today's proceedings. So, there's going to be an  
16 order that's going to be a discovery order, and it's going  
17 to go through the rulings that were made on each of the -- I  
18 think it was four but perhaps it was five issues that were  
19 addressed starting with Mister... Starting with production  
20 of documents going to Mr. Steinmetz, going to other former  
21 and current directors and officers, as well as other  
22 companies that were identified, going to the GDP protocol,  
23 and also going to the issue -- I guess it's with Mr.  
24 Steinmetz, but maybe it's with others, about control --  
25 possession, custody, and control and how that's interpreted.



1           So, those are my rulings. So, I will get that  
2           order, proposed order that should be served on the other  
3           side. If there's any comments, they need to be provided  
4           promptly. Obviously, you should share it, try to reach an  
5           agreement. I'm not hopeful that there will be an agreement  
6           but it's my ruling so I will -- I'm happy to take comments,  
7           but as it's ultimately my ruling, I will just -- I have the  
8           pen. So, that's -- so, while you may make comments, you may  
9           not necessarily hear from me as to have any further  
10          discussion because a ruling is a ruling.

11          As to that order and rationale, I don't think the  
12          rationale needs to really be in there. I think you can say  
13          for the reasons set forth in detail on the record of today.  
14          That way it prevents you from having to characterize things.  
15          But in terms of the practicalities, that's really what the  
16          order should be addressed. The Court rules this and this is  
17          what is required to be done.

18          MR. ROSENTHAL: Your Honor, in terms of timing,  
19          we'd like to wait for the transcript to (indiscernible) that  
20          way we can be sure that it conforms.

21          THE COURT: Yeah, that's fine. That's fine. I'm  
22          going to so order it from the bench so that we have a go-by  
23          going forward. But that's fine.

24          The thing that's sort of a bit of a hanging chad  
25          is the issue about attorneys' eyes only. Right? And so the

1 order is going to address that in some context, which is  
2 things that need to be produced, but notwithstanding the  
3 fact that they're necessary for the case, there are privacy  
4 protections which we will accord to individuals and we will  
5 treat them as attorneys' eyes only. And I think that came  
6 up in the context of personal emails.

7 You may want to fold in the confidential business  
8 information as well into that, that an issue was also  
9 raised, I made a ruling. It sort of didn't come up in the  
10 context of what was briefed but it came up. So, maybe that  
11 also goes into the order as to confidential business  
12 information that it's shared attorneys' eyes only and/or  
13 under seal. I'll let you work out the details of that. And  
14 that it can't be used publically without further order of  
15 the Court.

16 And I'm trying to figure out if there's anything  
17 else where the attorneys' eyes only protocol could be of use  
18 or that should be contained in the order.

19 MS. SCHWEITZER: There are only ministerial things  
20 that we'll obviously attach to the GDPR protocol itself so  
21 that you can so order and approve the protocol as part of  
22 that.

23 THE COURT: All right. Yeah, anything obviously  
24 that you agree to I'm 1,000 percent behind. So, that's  
25 fine. And so just to make it very clear on the record, it's